
(1962) 09 CAL CK 0023
In the Calcutta High Court

Chakravarty (R.C.)

APPELLANT

Vs

Divisional Superintendent, Eastern Railway and Others

RESPONDENT

Date of Decision : 05-09-1962

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1963) 2 LLJ 177

Hon'ble Judges : B.N. Banerjee, J

Bench : Single Bench

Judgement

B.N. Banerjee, J.—At all material times, the petitioner was employed as the divisional personnel inspector under the Eastern Railway. He was also general secretary of the Eastern Railwaymen's Union. On the eve of a general strike, the petitioner was taken in custody under the Preventive Detention Act and was detained in the Dum Dum Central Jail from 11 July to 22 July 1960. He was released under the order of the Government of West Bengal on 22 July 1960.

2. While in preventive custody, the petitioner and also 41 other persons were placed under suspension for having participated in an Illegal strike. The order of suspension bears the date 14 July 1960, and the material portion from the order is set out below:

The following staff who are on illegal strike with effect; from 12 July 1980 are hereby placed under suspension with immediate effect.

The staff will be paid the usual subsistence allowance as on half average pay and usual allowances thereon.

3. Under the Railway Fundamental Rules (see appendix XXXI, Indian Railway Establishment Code, Vol. II, at p. 228) the effect of detention in preventive custody causes automatic suspension from service. The material portion of the said rule is Bet out below :-

III. Committals to prison.-(1) A railway servant against whom proceedings have

been taken either for his arrest for debt or on a criminal charge or who is detained under any law providing for preventive detention, should be considered as under suspension for any period during which he is detained in custody or is undergoing imprisonment and not allowed to draw any pay or allowances (other than any subsistence allowance...) for such periods until the termination of the proceedings taken against him or until he is released from detention and allowed to rejoin duty, as the case may be.

4. On or about 7 September 1960, the respondent Divisional Superintendent, realized that by the order dated 14 July 1960, the petitioner was being put under double suspension, firstly, under automatic suspension while in preventive custody (that is to say, the period from 11 July to 22 July 1960) and, secondly, under suspension from 14 July 1960, under the order aforementioned. He, therefore, tried to remedy the situation by making the order, dated 14 July 1960, effective from after the petitioner's release from detention. A material portion from the order is set out below:

As R.C. Chakravarti, divisional personnel inspector, Howrah, was detained under Preventive Detention Act with effect from 12 July 1960 he should be considered as under suspension with effect from the same date in terms of Para. III of appendix XXXI, Rule 11. The office order of even number dated 14 July 1960 placing him under suspension shall be deemed to have effect immediately on his release from the said detention.

This is in partial supersession of office order of even number dated 14 July 1960 so far R.C. Chakravarty is concerned.

5. The petitioner was not allowed to rejoin his duty after release from detention and it is now admitted before me that disciplinary proceedings have been started against the petitioner, which have made considerable progress.

6. The petitioner has challenged the suspension order before this Court, under Article 226 of the Constitution, on a twofold ground. He says that he was appointed by the Deputy General Manager (Personnel) and he could not be suspended by the Divisional Superintendent, who was subordinate in rank to the Deputy General Manager (Personnel). He contended, in the next place, that in the order, dated 7 September 1960, he was suspended with retrospective effect from 22 July 1960, which was unlawful.

7. The first contention of the petitioner is without any substance. The petitioner was "appointed in the railway service as far back as in 1942. In Para. 13 of the affidavit-in-opposition, affirmed on behalf of the respondents, it is stated that at the time when the petitioner was appointed the Deputy General Manager (Personnel) used to hold the rank of a Junior administrative officer, whereas the Divisional Superintendent ranked and has always ranked as an intermediate administrative officer and therefore higher in rank than that of the* Deputy General Manager (Personnel). Mr. Noni Coomar Chakravarti, learned advocate for the petitioner, could not show that the aforesaid statement in the affidavit-in-

opposition was wrong. He, however, commented on the fact that the aforesaid statement in the affidavit-in-opposition was not affirmed as true to the deponent's knowledge but affirmed only as his submission to this Court and therefore no value should be attached to the aforesaid statement. The onus is on the petitioner to show that the petitioner was suspended by an officer subordinate in the rank to the disciplinary authority. Therein the petitioner has failed. I cannot, therefore, accept the argument that the petitioner was suspended by an authority incompetent so to do.

8. The next branch of the argument advanced by Mr. Chakravarti is however intriguing. Taken by itself, the order, dated 7 September 1960, may be criticized as suspending the petitioner with retrospective operation. It is now settled that there can be no suspension of a person with retrospective effect. But the question for my consideration is whether the order, dated 7 September 1960, is the suspension order. I have already referred to the circumstances which made it imperative for the respondents to make that order. The real suspension order was the order, dated 14 July 1960. It is not disputed that the blemish of suspension with retrospective operation did not attach to the said order. It is not also disputed that the aforesaid order, on its own terms, could be made effective from after the release of the petitioner from detention, that is to say, from 22 July 1960. The fact that the same thing was done by the order dated 7 September 1960, does not make any material difference. For the reasons aforesaid, I cannot put any emphasis on the second branch of the argument advanced by Mr. Chakravarti.

9. In the result, I discharge this rule without any order as to costs.